IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11662 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RATHOD PANKAJKUMAR GOPALBHAI

Versus

SECRETARY REVENUE DEPTT.

Appearance:

1. Special Civil Application No. 11662 of 2001

MR NC SHAH for Petitioner No. 1

MR NV GANDHI for Petitioner No. 1

..... for Respondents No. 1-3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 18/12/2001

ORAL JUDGEMENT

This is a petition by the son of a government employee, who expired on 7.7.1983, when he was in

service. The petitioner has prayed that he should be given appointment to a class III or class IV post on compassionate ground as his father passed away while in harness.

2. Learned advocate Shri N.V. Gandhi appearing for the petitioner has submitted that after the death of the petitioner's father, the family was in financial difficulties and as his family was not having sufficient income, the petitioner, as one of the dependents of late Shri Gopalbhai Rathod, had submitted an application for appointment to a class III or class IV post on compassionate ground under the respondents. The said application had been turned down and, therefore, the petitioner has been constrained to approach this court by way of this petition.

3. The relevant facts giving rise to this petition are as under :

4. Father of the petitioner expired on 7.7.1983 when he was in service. The petitioner had made a request for being appointed to a class III or class IV post on compassionate ground by applications dated 16.6.1998, 6.8.1998, 16.10.98, 1.12.1998 and 22.12.1998, but the said applications were rejected. The petitioner was informed by an order dated 3.11.1999 that as the applications submitted by the petitioner were not within the time prescribed, the petitioner's request for being appointed to any post on compassionate ground had been rejected.

5. Learned advocate Shri Gandhi appearing for the petitioner has submitted that on 7.7.1983 when the father of the petitioner expired, the petitioner was hardly 13 years old and in the circumstances it was not possible for him to make any application for being appointed to any post on compassionate ground. Upon attaining majority, the petitoner came to know that he could have submitted an application to the respondent authorities for being appointed to a class III or class IV post on compassionate ground as his father, late Shri Gopalbhai Rathod, had expired when he was in service.

6. It has been submitted by the learned advocate that looking to the financial position of the petitioner's family and looking to the policy laid down by the State of Gujarat with regard to giving appointment on compassionate ground, the respondent authorities ought to have entertained the application submitted by the petitioner and the application should not have been

rejected on the ground that the first application was not within the prescribed period. He has reiterated that as the petitioner was hardly 13 years old at the time when he lost his father, it was impossible for the petitioenr to submit an application for appointment and even if he had submitted an application for appointment to a class III or IV post on compassionate ground, the respondent authorities could not have given him any appointment as he was a minor at the relevant time. It has been therefore submitted by him that the respondent authorities should be directed either to give an appointment on compassionate ground to the petitoner or to reconsider the case of the petitioner in the light of what has been submitted by him hereinabove.

7. Learned advocate Shri Gandhi has relied upon a judgment delivered by this court in the case of Satyendrakumar Parbatsinh Zala v. Secretary, Education Department, Gandhinagar & Ors., 1993(1) GLH 308, to substantiate the arguments advanced by him. He has relied upon the said judgment so as to show that even considerably long after the death of the concerned employee, one of the legal heirs can be given appointment on compassionate ground. He has relied upon the observations made in paras 12 and 13 of the said judgment.

8. I have heard the learned advocate and have also perused the relevant documents referred to in the petition. In my opinion, this court cannot interfere in the matter of a compassionate appointment at this stage for the reason that the father of the petitioner had expired on 7.7.83 and this petition has been filed in 2001. A prayer made for compassionate appointment after such a long period cannot be entertained as per law laid down by the Hon'ble Supreme Court in several judgments.

9. In the case of Haryana State Electricity Board & Anr. v. Hakim Singh, (1997) 8 SCC 85, the Hon'ble Supreme Court has stated the circumstances in which the concept of compassionate appointment is to be applied. It has been observed in para 8 of the said judgment as under :

> "The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As

per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

It has been further observed by the Hon'ble Supreme Court that as an exception to the above-stated principle, the Government employment can be offered to a dependent of a deceased employee if he had died in harness and if the family was in a pitiable condition. It has been further observed in para 12 of the said judgment that

"The object of the provisions should not be forgotten that it is to give succour to the family to tide over the sudden financial crisis befallen the defendants on account of the untimely demise of its sole earning member."

After making the above-referred observations, the Hon'ble Supreme Court ultimately came to the conclusion that "the very object of appointment of the dependent of a deceased employee who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family."

10. In the instant case, the father of the petitioner had expired in 1983 and the family has survived for a period of 17 years. In the circumstances, as observed by the Hon'ble Supreme Court, it would not be proper to entertain this petition at such a belated stage because if the petition is entertained at this belated stage, it would frustrate the object with which the policy referred to hereinabove has been framed by the government authorities.

11. A similar view was taken by the Hon'ble Supreme Curt in the case of State of U.P. & Ors. v. Paras Nath, (1998) 2 SCC 412. The Hon'ble Supreme Court, while quoting the judgment delivered in the case of Union of India v. Bhagwan Singh, (1995)6 SCC 476, observed as under :

"The reason for making compassionate appointment, which is exceptional, is to provide immediate

financial assistance to the family of government servant who dies in harness, when there is no other earning member in the family."

and ultimately came to the conclusion that compassionate appointment should not be offered because of the delay which had taken place.

12. Looking to the law laid down by the Hon'ble Supreme Court in both the cases referred to hereinabove, in my opinion, this is not a fit case where the court should interfere. It is very clear that the family could manage for a period of 17 years and the family is still surviving. This shows that the family was not in dire need of money at the relevant time. Had it been so, the mother of the petitioner, that is, the widow of late Shri Gopalbhai Rathod, would have submitted an application for being appointed on compassionate ground. It was not done. In the instant case, the petitioner, who was minor at the relevant time and was hardly 13 years old, waited for several years and upon attaining majority he submitted an application for appointment on compassionate ground. This fact clearly reveals that the family was not in dire need of money and was not in a pitiable state at the relevant time. Looking to the said fact, no compassion is required to be shown to the family at this point of time.

13. So far as the judgment referred to by the learned advocate for the petitioner in the case of Satyendrakumar Parbatsinh Zala (supra) is concerned, looking to the law laid down by the Hon'ble Supreme Court in the above referred two cases, in my opinion, the said judgment cannot help the petitioner.

14. For the facts stated hereinabove, mainly on account of the delay which has been caused in approaching this court, this petition cannot be entertained and the petition is, therefore, rejected.

(A.R. Dave, J.)

(hn)